

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nathaniel Flack	Team: Squad #5	CCRB Case #: 201709759	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/18/2017 3:55 PM	Location of Incident: Clinton Avenue and Fulton Street	Precinct: 88	18 Mo. SOL 5/18/2019	EO SOL 5/18/2019	
Date/Time CV Reported Sun, 11/19/2017 10:01 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 11/19/2017 10:01 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			088 PCT
2. POM Matthew Lambert	14548	956820	088 PCT
3. POM Jonathan Martinez	10299	953059	088 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Lambert	Force: Police Officer Matthew Lambert pointed his gun at § 87(2)(b)	
B.POM Jonathan Martinez	Force: Police Officer Jonathan Martinez pointed his gun at § 87(2)(b)	
C.POM Matthew Lambert	Abuse: Police Officer Matthew Lambert arrested § 87(2)(b)	
D.POM Jonathan Martinez	Abuse: Police Officer Jonathan Martinez arrested § 87(2)(b)	
E.POM Matthew Lambert	Discourtesy: Police Officer Matthew Lambert spoke discourteously to § 87(2)(b)	
F. An officer	Force: An officer pointed his gun at § 87(2)(b)	
G. An officer	Force: An officer pointed his gun at § 87(2)(b)	
H. An officer	Force: An officer pointed his gun at § 87(2)(b)	

## Case Summary

O'Neill § 87(2)(b) a reporting non-witness, filed this complaint with the CCRB via telephone on November 19, 2017, on behalf of his son § 87(2)(b) and friends § 87(2)(b) § 87(2)(b) and § 87(2)(b).

On November 18, 2017, at approximately 3:55 pm, § 87(2)(b) was driving § 87(2)(b) and § 87(2)(b) south on Clinton Avenue in his Nissan, when they heard an accident behind them, involving an MTA bus driven by § 87(2)(b) and § 87(2)(b) which had just fled from a vehicle stop conducted by PO Matthew Lambert and PO Jonathan of the 88<sup>th</sup> Precinct. The Honda ran a red light and struck the MTA bus. As § 87(2)(b) began to drive his vehicle away from the smoking wreckage, PO Lambert and PO Martinez arrived on scene, pulled § 87(2)(b) from his vehicle at gunpoint, handcuffed him on the ground, and arrested him (**Allegation A: Force – § 87(2)(g)**; **Allegation B: Force – § 87(2)(g)**; **Allegation C: Abuse of Authority – § 87(2)(g)**; **Allegation D: Abuse of Authority – § 87(2)(g)**). PO Lambert told § 87(2)(b) that he “almost ruined a fucking kid’s life” or to “look what you fucking did” (**Allegation E: Discourtesy – § 87(2)(g)**). An officer allegedly pointed his gun at § 87(2)(b) and § 87(2)(b) (**Allegation F: Force – § 87(2)(g)**; **Allegation G: Force – § 87(2)(g)**; **Allegation H: Force – § 87(2)(g)**). Within approximately 10 minutes, the officers released § 87(2)(b) voided his arrest, and arrested § 87(2)(b) an occupant of the fleeing Honda who had been lying injured in the street near that vehicle. In the interim, a second occupant of the Honda fled on foot and was not apprehended.

Video footage of the incident was obtained from § 87(2)(b) and a nearby bank (Board Review 01, Board Review 02), but shows only portions of the incident and its aftermath.

## Findings and Recommendations

**Allegation A – Force: Police Officer Matthew Lambert pointed his gun at § 87(2)(b)**

**Allegation B – Force: Police Officer Jonathan Martinez pointed his gun at § 87(2)(b)**

**Allegation C – Abuse of Authority: Police Officer Matthew Lambert arrested § 87(2)(b)**

**Allegation D – Abuse of Authority: Police Officer Jonathan Martinez arrested § 87(2)(b)**

An attorney was consulted regarding these allegations.

PO Lambert and PO Martinez (Board Review 03, Board Review 04) testified in their CCRB interviews that the incident began when they observed a Honda sedan with excessively tinted, § 87(2)(b) license plates, and an expired registration sticker. Upon pulling the Honda over and approaching on foot, both officers observed the handle of a firearm protruding from the cup holder of the vehicle’s center console. PO Lambert observed that the car had two occupants in the front, both black males, but observed nothing else about them. PO Martinez noticed two occupants in the Honda but said he could not discern their race or gender. The Honda then sped off down Clinton Avenue and the officers returned to the RMP to pursue it. Both officers described the Honda as grey.

While PO Lambert drove the RMP in pursuit, PO Martinez made a radio transmission (Board Review 05) in which he notified the dispatcher that he was following a Honda Civic with partial § 87(2)(b), and provided a location and direction of travel. Approximately

20 seconds later, as the dispatcher attempted to confirm the location, PO Martinez stated that the Honda had crashed. Both officers testified they did not see the events of the crash in detail beyond seeing debris and smoke from approximately two blocks away, and proceeded directly to the scene. At no point did PO Martinez or PO Lambert put over the radio that they had seen a firearm.

The scene of the crash when the officers arrived, between 3 to 30 seconds later, is largely undisputed. PO Lambert's diagram (Board Review 06) is generally consistent with civilian and officer testimony in this respect. The Honda first struck § 87(2)(b) MTA bus, which came to a stop in the middle of the intersection. The Honda (labeled "crashed vehicle 2" on the diagram) then veered into oncoming traffic, and struck a black SUV which came to rest near the southeast corner of the intersection (labeled "crashed vehicle 1" on the diagram). The Honda traveled an additional 20 to 50 feet south on Clinton, coming to a rest within several feet of § 87(2)(b)'s Nissan sedan. § 87(2)(b) stopped the Nissan, and he and his friends exited to look for damage. PO Lambert parked the RMP just north of the accident, in the same intersection, and immediately ran south behind PO Martinez towards § 87(2)(b)'s vehicle.



Snag 1.mp4

§ 87(2)(b) (Board Review 07, Board Review 08, Board Review 09) and his friends § 87(2)(b) (Board Review 10, Board Review 11, Board Review 12), § 87(2)(b) (Board Review 13, Board Review 14) and § 87(2)(b) (Board Review 15) testified that § 87(2)(b) had re-entered the Nissan to move it away from the smoking Honda, when PO Lambert stopped him by banging on the window with the butt of his gun, before which time none of them were aware of the officers' presence. § 87(2)(b) and his friends said that once § 87(2)(b) was apprehended, a man in the vicinity was screaming something to the effect that officers should shoot him, but they were unaware of anyone mistakenly indicating § 87(2)(b) as the suspect prior to his apprehension.

It is undisputed that PO Lambert and PO Martinez had their guns drawn and pointed at § 87(2)(b) as they ran immediately to § 87(2)(b)'s vehicle. PO Martinez opened the driver's side door and pulled § 87(2)(b) from the vehicle. PO Lambert acknowledged that both he and PO Martinez pointed their guns at § 87(2)(b). It is undisputed that PO Lambert placed § 87(2)(b) face down in the street without physical resistance and handcuffed him, before searching him and placing him in the back a marked RMP which had arrived in the interim. Neither officer observed a weapon on § 87(2)(b).



Snag 2.mp4

Photographs and the video provided by § 87(2)(b) show that the Honda which fled from the officers and caused the crash was silver in color, while § 87(2)(b)'s Nissan is a noticeably darker charcoal grey (Board Review 17). § 87(2)(b) described the Honda as "silver" while describing § 87(2)(b)'s Nissan as being dark in color. The accident report prepared by PO Lambert (Board Review 30) notes § 87(2)(b)'s Nissan is registered in § 87(2)(b), with

no color listed. The property voucher for the Honda which was ultimately determined to have fled (Board Review 31) lists § 87(2)(b) and substantial damage to the front of the vehicle, and a color of “gray.”

§ 87(2)(b) was § 87(2)(b) at the time of the incident (Board Review 18). § 87(2)(b) the actual occupant of the Honda ultimately arrested, was § 87(2)(b). A wanted poster produced by the 88<sup>th</sup> Precinct Detective Squad for the unapprehended second occupant of the Honda (Board Review 19) similarly shows a heavysset male in his 30s. § 87(2)(b) and both occupants of the Honda are black.

§ 87(2)(b) (Board Review 16), who observed these allegations from her driver’s seat in the stationary bus, saw no bystanders pointing at § 87(2)(b) but rather bystanders had their phones out. Snag 1 shows several bystanders near the crash, none of whom are pointing. § 87(2)(b) said that one officer ran immediately towards § 87(2)(b)’s vehicle. She did not see § 87(2)(b) run from officers into this vehicle. She saw a second officer run towards the Honda, which she had seen run the red light and strike her bus. As the officers arrived, § 87(2)(b) saw the driver exit the Honda and run, while the passenger exited the Honda and fell over in the street and was confronted by the officer who approached that vehicle. § 87(2)(b) was unaware why an officer would confront § 87(2)(b) in his vehicle when the other vehicle had caused the accident.

PO Martinez and PO Lambert said they ran directly to § 87(2)(b)’s car upon exiting the RMP because it was a grey sedan and bystanders pointed to § 87(2)(b) who was standing near his Nissan when they arrived. PO Martinez initially said that “everyone” was pointing at § 87(2)(b) and saying he had a gun, but later said it was only a “couple” of people. PO Lambert said that a couple people were pointing at § 87(2)(b) while others were pointing at the Honda, though he did not notice the latter people until after § 87(2)(b) was apprehended. PO Lambert and PO Martinez testified that § 87(2)(b) ran into the Nissan upon “locking eyes” with the officers as they arrived. The officers’ statements were consistent with the ISAR (Board Review 33), though their Memo Book entries (Board Review 34, Board Review 35), like the radio communications, make no mention of a firearm being observed in the Honda or reported at the scene.

PO Martinez and PO Lambert both expressed that they did not initially notice the Honda or § 87(2)(b) believing at the time that § 87(2)(b)’s Nissan was the vehicle they had just stopped and pursued, based on the fact that both were grey and people were pointing. Both officers testified § 87(2)(b) was under arrest when he was approached. It is not disputed that the Honda was in close proximity to § 87(2)(b)’s Nissan at the crash intersection. After § 87(2)(b) was placed in the back of an RMP, PO Martinez and PO Lambert were consistent that PO Martinez noticed § 87(2)(b) lying injured in the street. PO Lambert realized that § 87(2)(b)’s Nissan was a darker color than the Honda after the fact. § 87(2)(b) was released with a voided arrest, and § 87(2)(b) was arrested for § 87(2)(b) and other offenses, though no weapon was recovered.

An assessment of probable cause turns on what was reasonably and objectively in the mind of law enforcement authorities. It does not turn on subjective considerations such as the absence of malice against a suspect. People v. Jennings, 54 N.Y.2d 518 (Board Review 20). Mistakes regarding the identity of a person arrested must be reasonable. People v. Nimmons, 60 A.D.2d 129 (Board Review 21).

In People v. Taylor, 31 A.D.3d 1141 (Board Review 22) and People v. Brooks, 266 A.D.2d 864 (Board Review 23), officers were found to lack reasonable suspicion to stop a vehicle of a similar color but different manufacturer than the one described over the radio. In People v. Crump, 217 A.D.2d 902 (Board Review 24), the Fourth Department found that officers lacked reasonable suspicion to conduct a stop based on a description of a dark colored vehicle of uncertain make, wanted in connection with a report of shots fired.

Officers may draw their firearms when they have an articulable belief that the potential for serious physical injury is present. PG 221-01 (Board Review 32).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

**Allegation E – Discourtesy Police Officer Matthew Lambert spoke discourteously to § 87(2)(b)**

§ 87(2)(b) said that PO Lambert told him while he was on the ground that he “almost ruined a fucking kid’s life.”

PO Lambert acknowledged cursing at § 87(2)(b) because he was “pretty angry” at him while he believed that § 87(2)(b) had fled and caused the accident. He said that he told § 87(2)(b) while holding him on the ground, “Look what you fucking did, you could have killed somebody.” He acknowledged § 87(2)(b) was not resisting while on the ground.

Officers are required to treat civilians with courtesy and respect. PG 200-02 (Board Review 25).

PO Lambert acknowledged using profanity towards § 87(2)(b) § 87(2)(g)

**Allegation F – Abuse of Authority: An officer pointed his gun at § 87(2)(b) Sansculotte.**

**Allegation G – Abuse of Authority: An officer pointed his gun at § 87(2)(b)**

**Allegation H – Abuse of Authority: An officer pointed his gun #####**

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) said in their CCRB interviews that when § 87(2)(b) re-entered the Nissan to move it away from the crash, all three friends remained outside of the vehicle. § 87(2)(b) alleged that as PO Lambert and PO Martinez approached § 87(2)(b) s vehicle, PO Martinez pointed his gun while moving it around such that it was pointed at § 87(2)(b) and § 87(2)(b) as they stood outside of the car while § 87(2)(b) was apprehended. § 87(2)(b) also made this allegation, but said that it was PO Lambert who pointed the gun at all three friends. § 87(2)(b) said in his phone statement that he as well as § 87(2)(b) and § 87(2)(b) re-entered the Nissan along with § 87(2)(b) and stepped out of the vehicle when PO Lambert and PO Martinez approached with guns drawn. § 87(2)(b) did not cooperate with the investigations’ attempts to obtain his sworn statement. § 87(2)(b) did not see whether an officer pointed a gun at § 87(2)(b), § 87(2)(b) or § 87(2)(b)

A Notice of Claim (Board Review 26) filed on behalf of § 87(2)(b) § 87(2)(b), § 87(2)(b) and § 87(2)(b) alleges without elaboration that all four were “forcibly removed” from the vehicle by police.

§ 87(2)(b) did not see any officer pointing a gun at § 87(2)(b) or § 87(2)(b)

PO Lambert and PO Martinez both denied pointing firearms at § 87(2)(b) or § 87(2)(b) PO Martinez did not recall any interaction with any friends of § 87(2)(b) while PO Lambert recalled that when he had § 87(2)(b) on the ground, § 87(2)(b) and § 87(2)(b) were saying that § 87(2)(b) was the wrong man.

§ 87(2)(g)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint involving § 87(2)(b) O'Neill § 87(2)(b) or § 87(2)(b) (Board Review 27).
- In five years with the NYPD, PO Martinez has been the subject of 27 allegations in eight prior CCRB complaints. In 201402142, allegations of discourtesy, offensive language (race), and offensive language (gender), were substantiated, and the NYPD imposed Command Discipline B. No additional allegations have been substantiated.
- In three years with the NYPD, PO Lambert has been the subject of 10 prior allegations in three prior CCRB complaints. None of these allegations have been substantiated.

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation due to a lawsuit.
- § 87(2)(b), and § 87(2)(b) have filed Notice of Claim regarding this incident (Board Review 26). § 87(2)(b) also filed a Notice of Claim (Board Review 29), pertaining solely to the accident itself.
- None of the complainants or victims in the case has a conviction history in New York (Board Review 28).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date